

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 29, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2025AP707
STATE OF WISCONSIN

Cir. Ct. No. 2023SC778

**IN COURT OF APPEALS
DISTRICT IV**

CITIBANK, N.A.,

PLAINTIFF-RESPONDENT,

V.

KIMBERLY K. KRAUSS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
BENNETT J. BRANTMEIER, Judge. *Reversed and cause remanded with
directions.*

¶1 ZIEGLER, J.¹ Kimberly Krauss appeals a small claims judgment awarding \$9,560.27 to Citibank, N.A., based on Krauss's default on her credit card

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

account with Citibank. Krauss argues that the circuit court erred when it granted Citibank's motion for summary judgment because Citibank failed to provide her with a notice of default and right to cure, and the notice requirement is not preempted by federal law. I conclude that Krauss is correct and that the proper remedy is dismissal of Citibank's complaint without prejudice. Accordingly, I reverse and remand with directions.

BACKGROUND

¶2 The following facts are undisputed for purposes of summary judgment.

¶3 Krauss had an open credit card account with Citibank (the account) and used the account for purchases. Citibank provided Krauss with monthly account statements that reflected, among other things, the charges on the account, interest and fees incurred, payments made, and the amount due on the account. Beginning in November 2022, Krauss failed to make several required monthly payments on the account.

¶4 After Krauss's first missed monthly payment, the account statement that Citibank sent to Krauss stated that Krauss's account was "past due." As Krauss failed to make additional payments, Citibank continued to send monthly account statements. Additional information was included on the subsequent account statements that will be addressed in more detail in the discussion section below. Citibank did not send Krauss any separate written notice regarding her failure to make payments.

¶5 In August 2023, Citibank filed a small claims summons and complaint in the circuit court against Krauss, seeking to recover a defaulted

consumer debt of \$9,060.77, based on Krauss's failure to make two or more required payments on the account within one 12-month period. Krauss denied the allegations in the complaint. One affirmative defense that Krauss asserted was that Citibank failed to provide a notice of default and right to cure as required by the Wisconsin Consumer Act (WCA). See WIS. STAT. § 421.101 (“[WISCONSIN STAT.] Chapters 421 to 427 shall be known and may be cited as the Wisconsin consumer act.”).

¶6 In April 2024, Citibank filed a motion for summary judgment. The motion was accompanied by a supporting affidavit with monthly account statements. Krauss filed a brief in opposition to the motion for summary judgment, arguing that Citibank had not submitted evidence that it had given her a notice of default and right to cure. Citibank replied that a notice of default and right to cure is not required because federal law preempts the WCA's requirement. In the alternative, Citibank argued that the account statements that Citibank provided to Krauss contained all of the information that is required by WIS. STAT. § 425.104(2) for a notice of default and right to cure and that this was sufficient.

¶7 The circuit court commissioner granted Citibank's motion for summary judgment, and Krauss filed a request for a hearing de novo in the circuit court. In October 2024, after additional briefing and oral argument, the court determined that the WCA provisions requiring the notice are preempted by federal law and, alternatively, that Citibank had provided sufficient evidence to show that a notice of default and right to cure was given. Accordingly, the court granted Citibank's motion for summary judgment and entered judgment in favor of

Citibank in the amount of \$9,560.27, which included the original amount requested plus costs and disbursements. Krauss appeals.²

DISCUSSION

¶8 I first address the primary issue on appeal, which is whether any of the account statements that Citibank provided to Krauss satisfied the notice of default and right to cure requirement set forth in WIS. STAT. §§ 425.104-.105. Later, I address Citibank’s concession that recent binding case law states that the notice requirement is not preempted by federal law, as well as Citibank’s argument that this court should certify the issue of preemption to our supreme court.

I. Standard of Review and Relevant Legal Principles

¶9 This court reviews a circuit court’s grant of summary judgment de novo, applying the same methodology as the circuit court. *Carlin Lake Ass’n v. Carlin Club Props., LLC*, 2019 WI App 24, ¶19, 387 Wis. 2d 640, 929 N.W.2d 228. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2).

² The parties’ briefs do not comply with WIS. STAT. RULE 809.19(8)(bm), which addresses the pagination of appellate briefs. See RULE 809.19(8)(bm) (providing that, when paginating briefs, parties should use “Arabic numerals with sequential numbering starting at ‘1’ on the cover”). As our supreme court explained when it amended the rule in 2021, the pagination requirement ensures that the numbers on each page of the brief “will match ... the page header applied by the eFiling system, avoiding the confusion of having two different page numbers” on every page of an electronically filed brief. S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021).

¶10 My analysis turns on the interpretation and application of the WCA, specifically WIS. STAT. §§ 425.103-.105, which are issues of law that this court decides de novo. See *Meyers v. Bayer AG*, 2007 WI 99, ¶22, 303 Wis. 2d 295, 735 N.W.2d 448.

¶11 “[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.” *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. When interpreting a statute, this court focuses on the words used in the statute, and if the statute’s meaning is plain, the inquiry is ordinarily stopped. *Id.*, ¶45. “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.* In addition, statutory language must be interpreted “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶46; see *Service Emps. Int’l Union Healthcare Wis. v. WERC (SEIU)*, 2025 WI 29, ¶10, 416 Wis. 2d 688, 22 N.W.3d 876 (explaining that “statutory interpretation begins and is usually complete only after a full consideration of all relevant intrinsic sources,” such as ““scope, context, and purpose ... ascertainable from the text and structure of the statute itself”” (quoted source omitted)).

¶12 “When the legislature states the purpose that underlies a statute, [courts] are to interpret the statute in light of that purpose.” *Brunton v. Nuwell Credit Corp.*, 2010 WI 50, ¶26, 325 Wis. 2d 135, 785 N.W.2d 302. Accordingly, as part of a plain meaning analysis, this court may consider the “textually or contextually manifest statutory purpose.” *Kalal*, 271 Wis. 2d 633, ¶49; *SEIU*, 416 Wis. 2d 688, ¶8; see also *CreditBox.com, LLC v. Weathers*, 2023 WI App 37,

¶22, 408 Wis. 2d 715, 993 N.W.2d 802 (explaining that the WCA’s explicit “rules of construction” are a “proper interpretive aid”).

II. Citibank’s Account Statements as Notice of Default and Right to Cure

¶13 The WCA states that it “shall be liberally construed and applied to promote [its] underlying purposes and policies.” WIS. STAT. § 421.102(1). These purposes and policies include: “simplify[ing], clarify[ing], and moderniz[ing] the law governing consumer transactions”; “protect[ing] customers against unfair, deceptive, false, misleading[,] and unconscionable practices by merchants”; and “permit[ting] and encourag[ing] the development of fair and economically sound consumer practices in consumer transactions.” § 421.102(2)(a)-(c). Another purpose of the WCA is to “coordinate the regulation of consumer credit transactions with the policies of the federal consumer credit protection act.” § 421.102(2)(d). These policies include “the protection of unsophisticated consumers.” *Brunton*, 325 Wis. 2d 135, ¶28; see *Lox v. CDA, Ltd.*, 689 F.3d 818, 822-23 (7th Cir. 2012) (explaining that the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq., is intended to protect against practices that are misleading to an “unsophisticated consumer”). “At the heart of each of the underlying purposes and policies of the [WCA] is the protection of customers.”³ *Brunton*, 325 Wis. 2d 135, ¶26.

³ For purposes of the WCA, “[c]ustomer” means a person other than an organization ... who seeks or acquires real or personal property, services, money or credit for personal, family or household purposes.” WIS. STAT. § 421.301(17). Federal consumer protection law defines “consumer” as “any natural person obligated or allegedly obligated to pay any debt.” 15 U.S.C. § 1692a(3) (2024). Because the meaning of the WCA is at issue in this case, I generally use the term “customer.” However, I occasionally refer to the protection of the “unsophisticated consumer,” because that is another purpose of the WCA. See *Brunton v. Nuvel Credit Corp.*, 2010 WI 50, ¶¶28, 46, 325 Wis. 2d 135, 785 N.W.2d 302. It is not disputed that Krauss was at all relevant times both a customer and consumer under the respective statutory definitions.

¶14 WISCONSIN STAT. §§ 425.103-.105 address what constitutes default, what notice must be provided to a customer in default before commencing an action, and how a customer may cure a default. Section 425.103(2) provides that default means, pertinent here, “[w]ith respect to an open-end plan, failure to pay when due on 2 occasions within any 12-month period.” § 425.103(2)(b). The parties do not dispute that Krauss was in default at all relevant times.⁴

¶15 WISCONSIN STAT. § 425.104 provides that “[a] merchant who believes that a customer is in default may give the customer written notice of the alleged default and, if applicable, of the customer’s right to cure any such default.” § 425.104(1). It further provides that

[a]ny notice given under this section shall contain the name, address and telephone number of the creditor, a brief identification of the consumer credit transaction, a statement of the nature of the alleged default and a clear statement of the total payment, including an itemization of any delinquency charges, or other performance necessary to cure the alleged default, the exact date by which the amount must be paid or performance tendered and the name, address and telephone number of the person to whom any payment must be made, if other than the creditor.⁵

⁴ In her reply brief on appeal, Krauss asserts that the transaction at issue here “is not an ‘open-end plan’ under WIS. STAT. [§] 425.103(2)(am)” and that, accordingly, a different definition of default applies. In her briefing in the circuit court, however, Krauss acknowledged that her default consisted of a “failure to pay when due on 2 occasions within any 12-month period” on an open-end plan. See § 425.103(2)(b). Further, Krauss does not dispute that she was in default, and the specific mechanism of default does not affect my analysis. For these reasons, I assume without deciding that the definition referenced by Citibank in its complaint and acknowledged by Krauss in the circuit court applies.

⁵ “‘Creditor’ means a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by or procuring consumer credit from 3rd persons.” WIS. STAT. § 421.301(16). There is no dispute that Citibank was at all relevant times a “creditor” and, therefore, also a “merchant,” as those terms are used in the WCA.

§ 425.104(2).

¶16 The language of WIS. STAT. § 425.104(1) appears permissive, in the sense that it states that a merchant “*may* give the customer written notice of the alleged default and ... right to cure.” See § 425.104(1) (emphasis added). But WIS. STAT. § 425.105 clarifies that, with exceptions not relevant here, a merchant may not commence an action against a customer unless the merchant believes that the customer is in default, “and then only upon the expiration of 15 days after a notice is given pursuant to [§] 425.104 if the customer has the right to cure under this section.” § 425.105(1). The parties do not dispute that Krauss had the right to cure her default, and therefore an action could not be filed against her until 15 days after Citibank gave her the notice of default and right to cure. This would have given her the opportunity to cure her default by “tendering” to Citibank “the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges.” See § 425.105(2).

¶17 If Krauss had been given this opportunity, and she had availed herself of it, this would have “restore[d]” her “rights under the agreement as though no default occurred,” or, in other words, without penalty. See ***Rosendale State Bank v. Schultz***, 123 Wis. 2d 195, 198, 365 N.W.2d 911 (Ct. App. 1985); WIS. STAT. § 425.105(2).

¶18 In sum, Citibank could only “commence [this] action” “upon the expiration of 15 days after” it gave Krauss a notice of default and right to cure “pursuant to [WIS. STAT. §] 425.104.” See WIS. STAT. § 425.105(1). If Citibank did not provide a notice that fully complied with § 425.104, then it was barred from filing suit by § 425.105(1). See ***Indianhead Motors v. Brooks***, 2006 WI App

266, ¶¶13-14, 297 Wis. 2d 821, 726 N.W.2d 352 (The WCA “requires a notice that fully complies with ... § 425.104.”).

¶19 The statutes require that the merchant actually notify the customer who has the right to cure of the customer’s alleged default and the right to cure. *See* WIS. STAT. §§ 425.104(1), 425.105(1). The status of being in default has great legal significance in consumer credit transactions because, absent an agreement to the contrary, “no cause of action with respect to the obligation of a customer in a consumer credit transaction shall accrue in favor of a creditor except by reason of a default” as defined in WIS. STAT. § 425.103(2). § 425.103(1). Also of great legal significance is the right to cure, because “tendering the amount of all unpaid installments due at the time of the tender,” in the case of a default due to nonpayment, “restores to the customer the customer’s rights under the agreement as though no default had occurred.” *See* § 425.105(2). It is true that the statute does not require a merchant to use any specific language in order to provide the required notice. *See* § 425.104. Nevertheless, I conclude that the WCA requires that the written information must actually notify the customer, even one who is unsophisticated, that the merchant alleges that the customer is in default under the law and that the customer has the right to cure such default. *See* §§ 425.104(1), 425.105(1); **Brunton**, 325 Wis. 2d 135, ¶28 (one purpose of the WCA is “the protection of unsophisticated consumers”). This conclusion achieves a reasonable result that furthers the purposes of the WCA, including protecting customers from unfair, deceptive, and misleading practices by merchants. *See* WIS. STAT. § 421.102(2)(b); **Brunton**, 325 Wis. 2d 135, ¶¶26, 28. In addition, pertinent here, § 425.104(2) explicitly requires that the notice contain “a clear statement” of the performance necessary to cure the default.

Additional Background

¶20 I now present additional detail regarding the information included on the account statements sent to Krauss. The majority of the information on the account statements was the same both before and after Krauss initially defaulted. I first present information provided on all account statements, and then focus on the information provided in the account statements sent after Krauss began to miss her payments.

¶21 Each account statement Citibank submitted in support of its motion for summary judgment is titled “Account Statement,” and each one contains: Krauss’s account number; a Citibank-associated phone number, mailing address, and website for account inquiries and customer service; a summary of account activity, including purchases, credits, fees and interest charged, and the past due amount; and the minimum payment due and payment due date. In addition, each account statement contains a warning that late payments may incur fees.

¶22 There were some differences between the account statements sent after the first missed payment and those sent after Krauss was in default. The first page of the account statement sent after Krauss missed the first payment, before she was in default, stated in part:

You are over your credit limit. Please pay at least the Minimum Payment Due, which includes an overlimit amount of \$338.95. If you have already sent us this payment, thank you.

Your account is past due. Please make at least your minimum payment within this billing period to avoid any additional fees that may apply. You can avoid missing payments by setting up AutoPay and stay on top of your account activity by setting up alerts. To make a payment, please visit us online or call us using the toll free or TTY numbers listed at the top of this statement.

¶23 The account statement sent after Krauss failed to make two monthly payments in a row, when she was in default, replaced the language immediately above with the following:

Reminder: Your account is 2 payments past due. Please make at least your minimum payment today to avoid any additional fees that may apply and bring your account up to date. To make a payment, please visit us online or call us using the toll free or TTY numbers listed at the top of this statement. If you're having difficulty making payments, please contact us; we may be able to help.

¶24 The account statement sent after Krauss failed to make three monthly payments in a row replaced the language immediately above with the following:

Your account is 3 months past due. Make your minimum payment by the due date to avoid account closure and loss of charging privileges. If you're experiencing financial difficulty, we offer a number of payment solutions that may be available to help you bring your account current, if you qualify. To make a payment, please visit us online or call us using the toll free or TTY numbers listed at the top of this statement.

¶25 The account statement sent after Krauss failed to make four monthly payments in a row replaced the language immediately above with the following:

Your account is 4 months past due. Please make your minimum payment by the due date shown. To make a payment, please visit us online or call us using the toll free or TTY numbers listed at the top of this statement. If you're having difficulty making payments, please contact us; we may be able to help.

¶26 Subsequent account statements did not add any language that would be germane to determining whether any of the account statements provided a statutorily-compliant notice of default and right to cure.

Analysis

¶27 To repeat, a merchant who believes that a customer is in default may not commence an action to recover the debt until 15 days after it gives the customer a notice of default and right to cure pursuant to WIS. STAT. § 425.104, if that customer has the right to cure. WIS. STAT. § 425.105(1). The notice must be a written notice that notifies an unsophisticated customer that the merchant alleges the customer is in default under the law and that the customer has the right to cure such default. See §§ 425.104(1), 425.105(1). In addition, the notice must contain the specific information set forth in § 425.104(2), including, pertinent here, “a clear statement” of the total payment necessary to cure the default and the exact due date. §§ 425.105(1), 425.104(2). I conclude that none of the account statements sent to Krauss provided this notice.

¶28 The information provided to Krauss in the account statements sent after default would not clearly notify an unsophisticated customer that the merchant alleged the customer was in default under the law, that the customer had the right to cure the default, or that performance of specific actions was necessary to cure the default. The account statement sent when Krauss initially defaulted provided only one relevant addition, in the same size font as the rest of the document: “**Reminder: Your account is 2 payments past due.** Please make at least your minimum payment today to avoid any additional fees that may apply and bring your account up to date.” This language does not reasonably notify an unsophisticated customer either that the customer is in default under the law or that the customer has the right to cure that default to restore the customer’s account to current status, as though no default had occurred. See *Rosendale State Bank*, 123 Wis. 2d at 198. Nor does the language in the following two assertions in the account statements: “**Your account is 3 months past due.** Make your

minimum payment by the due date to avoid account closure and loss of charging privileges[,]” and “**Your account is 4 months past due.** Please make your minimum payment by the due date shown.”

¶29 This is especially true when the account statement sent when Krauss had only missed one payment and was not yet in default similarly stated: “**Your account is past due.** Please make at least your minimum payment within this billing period to avoid any additional fees that may apply.” As described previously, the language in subsequent account statements did not differ in any pertinent way and failed to provide the required notice. Said differently, “Your account is ... past due” does not convey to an unsophisticated customer that they are in default, and language that tells a customer they must make a payment “to ... bring your account up to date,” or “to avoid account closure and loss of charging privileges” does not clearly convey to a customer that they have a right to cure their default under the law and restore their rights under the agreement with the merchant. It would be unreasonable to conclude that, when enacting this requirement, the legislature intended that the requirement could be satisfied in the absence of an assertion to the customer that the customer is in default or that the customer has the opportunity to cure that default without penalty.

¶30 Further, the language in the account statements does not clearly state the performance necessary to cure the default. See WIS. STAT. § 425.104(2). I now refer specifically to the following sentences included in the account statements sent when Krauss was in default: “If you’re having difficulty making payments, please contact us; we may be able to help[,]” and “If you’re experiencing financial difficulty, we offer a number of payment solutions that may be available to help you bring your account current, if you qualify.” These sentences suggested that Krauss had alternative options to resolve any issues with

Citibank caused by her missed payments. But, as noted above, the only option given under the WCA for a customer to cure a default caused by nonpayment is to “tender[] the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges” within 15 days of the notice being given. WIS. STAT. § 425.105(2). The language in the account statements which suggested that Krauss had alternatives to payment of the “minimum payment due” obscured from her the performance necessary to cure her default. Therefore, the account statements did not contain “a clear statement” of the total payment necessary to cure the default, as required by § 425.104(2). Interpreting any of the account statements in this case as providing a clear statement of the performance necessary to cure the alleged default would be contrary to the purposes of the WCA of protecting customers against merchants using misleading practices.

¶31 I find additional support for my conclusion in the opinion of the U.S. District Court for the Western District of Wisconsin in ***Bahena v. Jefferson Capital Systems, LLC***, 363 F. Supp. 3d 914 (W.D. Wis. 2019).⁶ In that case, the court explained that “it would be unfair and deceptive to bury the required notice information in routine billing statements.”⁷ *Id.* at 925. The billing statements in

⁶ See ***City of Weyauwega v. Wisconsin Cent. Ltd.***, 2018 WI App 65, ¶12 n.4, 384 Wis. 2d 382, 919 N.W.2d 609 (“Although federal court decisions, other than United States Supreme Court decisions on questions of federal law, do not bind us, we may follow federal court decisions that we find persuasive.”).

⁷ The parties do not argue, and I do not discern, that there is a meaningful difference between Citibank’s “account statements” and the “billing statements” referenced in ***Bahena v. Jefferson Capital Systems, LLC***, 363 F. Supp. 3d 914 (W.D. Wis. 2019). Accordingly, I use these terms interchangeably in this opinion.

Bahena

state[d] the total amount owed and required to be paid to bring Bahena's account back to good standing. But this is merely routine billing statement information: this same information was included in the [earlier] billing statement, issued when Bahena was not yet in default. Maybe a merchant could include a proper notice of default and right to cure along with a billing statement, but a routine billing statement that simply states the amount overdue is not notice that complies with the WCA.

Id.

¶32 The court further explained that “[t]he bottom line is that not every document that includes the information specified in [WIS. STAT.] § 425.104(2) is really a notice of a right to cure.” ***Bahena***, 363 F. Supp. 3d at 924. “Implicit in the concept of a notice of a right to cure is that the document, even if no specific words or title is required, provide notice. A document identical to or that would reasonably be mistaken for simply a monthly billing statement does not satisfy the requirement.” ***Id.*** (quoted source omitted). As in ***Bahena***, here, the account statements stated the amount owed to “bring [the] account up to date” or “to avoid account closure,” but this information did not differ from that in previous account statements in a way sufficient to put an unsophisticated customer on notice that the customer was in a legal position different from the one the customer was in when the customer failed to make only one payment. This is particularly true when the account statements otherwise suggested that Krauss could take different actions to “bring [her] account up to date” or “avoid account closure.”

¶33 To be clear, I do not purport to conclude that information added to an account statement when a customer becomes in default could never meet the requirements of a notice of default and right to cure set forth in WIS. STAT. § 425.104. Rather, I conclude only that the language in Citibank's account

statements when Krauss was in default was not sufficient to provide Krauss with the required notice of her alleged default and her right to cure. Here, the language presented in the middle of the account statement was in a format indistinguishable from that included on account statements when Krauss was not in default, and it provided no clear declaration that the failure to make two or more payments in a 12-month period meant that Krauss was in default, or that she could cure that default by tendering the amount of all unpaid installments due. In addition, that language, by suggesting that alternatives to payment of “all unpaid installments due” existed, did not provide “a clear statement” of the performance necessary to cure Krauss’s default. *See* WIS. STAT. §§ 425.104(2), 425.105(2).

¶34 Citibank argues that “[t]he ***Bahena*** decision is legally and factually distinguishable from this case and is nothing more than persuasive guidance which is not binding on this [c]ourt.” Citibank is correct that ***Bahena*** is not binding. Yet Citibank does not persuade me that the factual differences in ***Bahena*** affect in any way the applicability of the analysis to this case. Specifically, I consider ***Bahena***’s reasoning persuasive that the requirement that the document actually provide notice of the default and right to cure is implicit, and that “it would be unfair and deceptive to *bury* the required notice information in routine billing statements.” *See Bahena*, 363 F. Supp. 3d at 924-25 (emphasis added).

¶35 Citibank also asserts that Krauss forfeited the “new, legal argument that billing statements cannot constitute sufficient [n]otice of [d]efault and [r]ight to [c]ure under the WCA” by failing to raise it in the circuit court. I first note that Citibank’s assertion is belied by the record: at the hearing *de novo* in the circuit court, Krauss did argue that as a matter of law the account statements could not constitute a notice of default and right to cure. Moreover, as explained above, I assume without deciding that an account statement could contain a statutorily-

compliant notice of default and right to cure under WIS. STAT. § 425.105(1). Accordingly, I do not rely on the argument that Citibank asserts is forfeited.

¶36 Citibank next asserts that “[u]nsupported argument does not overcome summary judgment” and that once Citibank established its claim for an account stated against Krauss, “[t]he burden then shifted to Krauss to present evidence to overcome summary judgment and support her affirmative defenses.” In other words, Citibank argues that Krauss was required to demonstrate the existence of a genuine issue of material fact to defeat summary judgment and that because she did not, “the circuit court’s [j]udgment in Citibank’s favor must be affirmed.” No doubt establishing that “one or more genuine issues of material fact are in dispute” is one way to defeat a motion for summary judgment. **Strasser v. Transtech Mobile Fleet Serv., Inc.**, 2000 WI 87, ¶30, 236 Wis. 2d 435, 613 N.W.2d 142. But it is not the only way. Another is to show that “the moving party is not entitled to judgment as a matter of law.” *Id.* Here, Krauss successfully argued that, on the undisputed facts, Citibank was not entitled to judgment as a matter of law.

¶37 Citing an unpublished opinion of this court, **Heights Financial Corp. v. Crankshaw**, No. 2024AP1182, unpublished slip op. (WI App Mar. 20, 2025), Citibank also asserts that “there is no requirement that a party prove that it gave notice or that notice was ever received by the consumer.” Citibank misreads our opinion, which acknowledges that there is no requirement that a party prove that the notice was received by the customer, but which also states that a party is “required to prove that it mailed ... the notice of right to cure.” See *id.*, ¶14.

¶38 Citibank also asserts that “[i]nterpreting the WCA in the manner urged by Krauss would be to allow the tail to wag the dog.” Citibank does not

develop this assertion into an argument supported by relevant legal authority, and I reject it on that basis. See **Borsellino v. DNR**, 2000 WI App 27, ¶11, 232 Wis. 2d 430, 606 N.W.2d 255 (This court need “not consider arguments unsupported by reference to legal authority.”).

¶39 Citibank further asserts that “[a] purportedly ‘unsophisticated consumer,’ ... should not be permitted to benefit from continued nonpayment of outstanding debt obligations simply by alleging that they ignored or do not otherwise appreciate that a billing statement detailing the ‘Past Due Amount,’ the ‘Minimum Payment Due,’ and the exact ‘Payment Due Date,’ among other things, means that they must pay their debt obligations or otherwise be liable in a court of law.” This policy assertion would have to be directed at the legislature, which has made the policy choice to require that merchants provide customers who have the right to cure with notices of default and right to cure with the information set forth in WIS. STAT. § 425.104, with the objective of protecting those customers. As stated, the “Past Due Amount,” “Minimum Payment,” and “Payment Due Date” are included on all account statements, even those sent when Krauss was not in default, and more is required for a statutorily-compliant notice of default and right to cure.

III. Preemption

¶40 On appeal, Citibank concedes that the notice of default and right to cure provisions of the WCA are not preempted by federal law, pursuant to this court’s binding decision in **Bank of America, N.A. v. Riffard**, 2025 WI App 17, 415 Wis. 2d 568, 19 N.W.3d 604, *rev. granted*, 27 N.W.3d 791, *vol. dismissed*. However, Citibank asks that this court certify the issue to our supreme court

because Citibank disagrees with our decision and because our decision in **Riffard** is “presently on review” by our supreme court.

¶41 I observe that, since Citibank made this argument, the appeal of this court’s **Riffard** opinion to our supreme court was voluntarily dismissed, and, accordingly, our decision in **Riffard** stands.⁸ See WIS. STAT. RULE 809.18(1) (“The dismissal of an appeal by the appellant or by agreement of the parties or their counsel does not affect the status of a lower court decision....”); WIS. STAT. RULE 809.63 (“the rules governing procedures in the court of appeals are applicable to proceedings in the supreme court unless otherwise ordered”). Citibank does not otherwise argue that this case meets the criteria for certification. I decline to certify this case largely because a petition for review by Citibank in this case, should it decide to pursue that path, would be sufficient to bring the issue to our supreme court’s attention.

IV. Remedy

¶42 The parties disagree on the appropriate remedy. Krauss requests that this court reverse and “remand this matter with instructions to grant summary judgment in favor of Krauss along with statutory violations of the [WCA] and an award of attorney’s fees.” Citibank argues that if I reverse on the ground that Citibank did not provide Krauss with a statutorily-compliant notice of default and right to cure, “the remedy is simply dismissal without prejudice.” Krauss did not file a counterclaim arguing that she is entitled to relief for violations of the WCA

⁸ This information was obtained from the SCCA Case Management application utilized by the Wisconsin Supreme Court and Court of Appeals, containing file information entered by court staff. I take judicial notice of this information pursuant to WIS. STAT. § 902.01(2)(b).

in the circuit court, and, accordingly, I do not consider this argument. *See State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (this court generally does not consider issues raised for the first time on appeal). I also decline to address this request because Krauss does not develop an argument on appeal explaining why she is entitled to any specific relief under the WCA. *See Wisconsin Conf. Bd. of Trs. of the United Methodist Church, Inc. v. Culver*, 2001 WI 55, ¶38, 243 Wis. 2d 394, 627 N.W.2d 469 (this court may decline to address arguments that are conclusory and insufficiently developed).

¶43 Pursuant to *Security Finance v. Kirsch*, 2019 WI 42, ¶¶18, 30, 386 Wis. 2d 388, 926 N.W.2d 167, Krauss is entitled to dismissal of Citibank’s complaint without prejudice. *See id.*, ¶30 (explaining that a failure to send a notice of default and right to cure is “merely a failure to comply with a procedural requirement that warrant[s] dismissal of [the] action”).

CONCLUSION

¶44 For the reasons stated above, I reverse and remand with directions to dismiss Citibank’s complaint without prejudice.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

